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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/790,602	03/01/2004	Lyndsay Williams	M1103.70797US00	9169

45840 7590 01/05/2010

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EXAMINER	
BERTRAM, ERIC D	

ART UNIT	PAPER NUMBER
3766	

MAIL DATE	DELIVERY MODE
01/05/2010	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/790,602	WILLIAMS ET AL.	
	Examiner	Art Unit	
	Eric D. Bertram	3766	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *08 September 2009*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1,4-9,13-17,20-22,29-33 and 44-48* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1,4-9,13-17,20-22,29-33 and 44-48* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *08 September 2009* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *9/8/09, 12/2/09*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed 9/8/2009 have been fully considered but they are not persuasive. The applicant initially argues that a manual button is used to determine whether to take a picture, while the motion sensor does not. However, the applicant admits that the motion sensor may prevent an image from being taken (see page 11 of the Remarks). Therefore, the motion sensor and the controller 11 necessarily determine whether a picture is taken or not based on satisfaction of a capture condition. The applicant further argues that Lemelson does not disclose making decisions based on a change in level of light. However, the current claims do not recite "determining a change in level of the ambient light and comparing that change is above a first threshold." Clearly, if a change in the level of ambient light occurs, and this level of change is enough to change the shutter speed of the camera, then the camera of Lemelson has determined whether the change in light is above a threshold required to set the shutter at its appropriate speed.

2. The 35 USC 102(b) and 103(a) rejections are still considered proper.

Information Disclosure Statement

3. The information disclosure statements (IDS) submitted on 9/8/09 and 12/2/09 were filed in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statements are being considered by the examiner. However, Russian Document 2089932 has not been considered since no translation was included.

Claim Rejections - 35 USC § 112

4. Applicant's amendments to claims 8 and 9 are acknowledged and accepted, and the 35 USC 112, 2nd paragraph rejections have been withdrawn.

Drawings

5. The drawings were received on 9/8/2009. These drawings are acknowledged and accepted by the Examiner.

Specification

6. Based on the newly submitted drawings, the objection to the specification has been rendered moot.

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 1, 7, 12, 15, 17, 28, 30-32, 44 and 45 are rejected under 35 U.S.C. 102(b) as being anticipated by Lemelson (US 4,901,096). Lemelson discloses a portable recall device 10 configured to be carried by a user (read as a wearer), which includes a camera 10A (see figure 1 and Col. 1, lines 8-12). Lemelson further discloses an accelerometer 16 operably connected to the camera that will only allow capture of an image if a stable condition is detected (Col. 3, lines 12-29). Lemelson further discloses an environmental sensor that senses ambient light external to the user, and will only allow capture of an image

if the sensed ambient light is within predetermined parameters (Col. 3, lines 5-11). Since the sensor is responsible for automatically setting the shutter timing functions of the camera based on the amount of ambient light detected, it inherently must detect changes in the ambient light, otherwise the camera would never adjust the shutter timing. Furthermore, without knowing how long the shutter must remain open for, the camera would never be triggered to capture an image. Clearly, only after the device has become stable, and only after the shutter timing has been determined based on ambient light, is the camera triggered to open its shutter and capture an image. Therefore, once the switch 13 is depressed, detection of the proper amount of ambient light and detection of a stable condition of the camera will cause the capture of an image by the camera (Col. 2, line 59-Col. 3, line 11).

9. Regarding claims 7, 17 and 46, since the environmental sensor of Lemelson is configured to detect all changes in ambient light in order to adjust the shutter timing, this would inherently include any changes in ambient light due to movement of the environmental sensor from one room to another. Furthermore, it is important to note that the current claims, nor the applicant's specification, disclose actually detecting a change in rooms. All that is disclosed is that a change in ambient light "can indicate movement of the wearer from one room to another" (see page 6 of the specification).

10. Regarding claims 15, 30 and 32, the capture of the image will be delayed until the stable condition is detected.

11. Regarding claim 32, the microprocessor or computer 11 must inherently be encoded with a computer program from a computer program product in order to carry out the steps described above.

12. Regarding claim 31, a user of a camera will inherently review the images taken by the camera at a later point in time.

Claim Rejections - 35 USC § 103

13. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

14. The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

15. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a

later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

16. Claims 4, 8, 20 and 47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lemelson in view of Ishibashi (US 6,558,050). Ishibashi discloses a portable recall device 1 that is configured to be carried by a wearer as shown in figure 1. The device includes a camera, as well as a three dimensional head orientation detecting unit 4 (Col. 2, lines 30-56), and a "microphone 22 that takes in sounds around the wearer and voices of the wearer, too…Using this data, the controller 5 checks whether the wearer is speaking or not" (Col. 2, lines 57-60). If in step #10 a capture condition is detected in that the wearer is found not to be speaking by monitoring ambient conditions (Col. 4, lines 21-40), and if this capture condition is followed by the detection of a stable head orientation by the head orientation detecting unit at step #50, then a shooting instruction is outputted to the video camera circuit (Col. 4, lines 48-49). Therefore, Ishibashi discloses that the use of ambient sounds as a capture condition for a camera is old and well known in the art, and the incorporation of this feature in the analogous art of Lemelson would have been obvious to one of ordinary skill in the art at the time of the applicant's invention.

17. Regarding claims 4 and 20, Ishibashi discloses the audio data may be recorded in recording unit 12 (Col. 3, lines 15-18)

18. Claims 5, 6, 21 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lemelson in view of Horimoto (US 4,009,943). Lemelson, as

described above, discloses the applicant's basic invention with the exception of using a wide-angle, fish-eye lens. However, the use and advantages of a wide-angle, fish-eye lens is notoriously old and well known in the art, as taught by Horimoto (Col. 1, lines 11-13). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to modify the device of Lemelson by including a wide-angle, fish-eye lens in order to capture the true perspective of what the actual object would appear to an observer (Col. 1, lines 13-18).

19. Claims 13, 14 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lemelson in view of Grosvenor et al. (US 2003/0025798, hereinafter Grosvenor). Lemelson, as described above, discloses the applicant's basic invention, including the use of an accelerometer to detect motion of a user and a camera held by the user. However, Lemelson is silent as to using a plurality of accelerometers or a gyroscope to detect the motion. While the use of gyroscopes and/or accelerometers are notoriously old and well known in the art for detecting rotational/angular movement of an object, attention is directed to the secondary reference of Grosvenor, which discloses the use of one or more gyroscopes or accelerometers to measure movement of a camera that is attached to a user (par. 0068). Specifically, Grosvenor discloses the use of a plurality of accelerometers for detecting rotation along three axes (par. 0069). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to modify the device of Lemelson by using at least one gyroscope or a plurality of accelerometers to detect angular/rotational

movement since Grosvenor demonstrates that they would be fully capable of detecting the motion of the user and the camera held by the user, which would help guarantee a stable condition, as required by Lemelson.

20. Claims 9, 16 and 48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lemelson in view of Moultrie, Jr. (US 2002/0159770, hereinafter Moultrie). Lemelson, as described above, discloses the applicant's basic invention with the exception of the capture condition comprising detecting a change in the signal from a passive infrared detector triggered by heat from a person in the proximity of the camera. Attention is directed to the secondary reference of Moultrie, which discloses a camera that is activated by detecting a change in the signal from a passive infrared detector triggered by heat from an animal in the proximity of the camera (see abstract). Therefore, it would have been obvious to one of ordinary skill in the art to modify the camera of Lemelson by adding capture condition detection with an infrared sensor as taught by Moultrie in order to make the system automatic and allow the user to take images of interest without having to be with the camera.

21. Claims 33 and 46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lemelson in view of Shiozaki et al. (US 5,978,603, hereinafter Shiozaki). Lemelson, as described above, discloses the applicant's basic invention with the exception of the device being capable of playing digital media. However, attention is directed to the secondary reference of Shiozaki, which discloses a digital camera 1 that is capable of displaying digital media on a LCD display 4 (see figure 2). Therefore, it would have been obvious to replace the

film camera of Lemelson with the art-recognized equivalent digital camera of Shiozaki in order to allow a user to preview images on the display and delete unwanted images without wasting film.

22. Regarding claim 46, Lemelson, as described above, discloses an ambient light level sensor.

Conclusion

23. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eric D. Bertram whose telephone number is (571)272-3446. The examiner can normally be reached on Monday-Thursday from 9-5 EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl H. Layno can be reached on 571-272-4949. The fax

phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/E. D. B./
Examiner, Art Unit 3766

/Mark W Bockelman/
Primary Examiner, Art Unit 3766
January 2, 2009